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09/131,141	08/07/1998	MOHAN V. KALKUNTE	82771P.270	7385

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EXAMINER

DUONG, FRANK

ART UNIT

PAPER NUMBER

2664

DATE MAILED: 03/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

14

Office Action Summary

Application No.

09/131,141

Applicant(s)

KALKUNTE ET AL.

Examiner

Frank Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is a response to the communication dated 01/08/2002. Claims 1-22 are pending in the application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 09/²⁷¹~~701~~,011. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matters of claims 1-22 of the instant application encompassed the claimed invention of claims 1-18 of the above copending patent application.

Take for instant:

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Claim 1 of the instant application calls for "*A method for preserving frame order of a plurality of frames transmitted over a plurality of communication links, the method comprising:*

*receiving up to a plurality of indications denoting the **start of frame transmission on a corresponding plurality of communication links;** and*

*assigning a **pointer value** to each of a plurality of records in a **buffer** receiving the corresponding plurality of frames based, at least in part, on a relative order in which the indications are received*".

Claim 1 of the above copending application calls for "*A method for preserving frame order across an aggregated link comprised of a plurality of virtual links each supporting a particular transmission rate, the method comprising:*

*receiving up to a plurality of indications denoting **commencement of frame transmission on each of the virtual links;** and*

*assigning a **plurality of pointer values** to a corresponding plurality of records in a **pointer value buffer associated with each of the virtual links based, at least in part, on the relative order in which data frames are transmitted on each of the virtual links***".

As clearly corresponding in the bolded words above, the differences between claim 1 of the instant application and claim 1 of the copending application are the wording in the claims.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that

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compending application since the referenced compending application and the instant application are claiming common subject matter. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other compending application.

Thus, the provisional obviousness-type double patenting rejection of claim 1 is proper.

Other independent claims in the instant application are rejected by the same rationale applied to claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of compending Application No. 09/271,008. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matters of claims 1-22 of the instant application encompasses the claimed invention of claims 1-20 of the above compending patent application.

Evidence can be, explicitly or obviously, found by comparing the independent claims of the instant application against the independent claims of the above compending patent application.

The subject matter claimed in the instant application is fully disclosed in the referenced compending application and would be covered by any patent granted on that

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compending application since the referenced compending application and the instant application are claiming common subject matter. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other compending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 9, 11, 14, 19-20 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Simmons et al. (USP 6,192,028) (hereinafter "Simmons").

Regarding claim 9, in according to Figure 1-3, 9, col. 6, line 5 to col. 10, line 12, Simmons discloses an apparatus (Figures 2A-2B) comprising:

A buffer having a plurality of records (32);

A network interface (28, 42, 66 and 70), coupled to the buffer (32), to receive a plurality of frames from the plurality of communication links (col. 6, lines 5-20, elements 60, 62 and 36), to store the frames in a corresponding plurality of records within the buffer in order of receipt (col. 7, lines 47-56), and to assign a pointer value to each of

the plurality of records denoting a relative order of frame transmission of each of the plurality of frames (col. 8, lines 21-43).

Regarding claim 11, at col. 6, lines 5-21, Simmons discloses that MAC 60, 62 and 36 (corresponding to "communication links") are part of multiport switch 12 (corresponding to "Ethernet network").

Regarding claim 14, in according to col. 8, lines 34-43, Simmons discloses buffer manager 65 takes the assigned frame pointer from the bottom of the output queue 67 using a frame pointer read bus 86, fetches the corresponding data frame in a DMA transaction from the location in an external memory 36 pointed to by the assigned frame pointer, and places the fetched data frame into the appropriate transmit FIFO 66 via a data bus 82 for transmission. Thus, the recitation thereat reads on the claimed limitations set forth as claimed.

Claims 19-20 and 22 are rejected by the same rationale applied to claims 9-11 and 14 as discussed above because the claims call for an intended use of apparatus of claims 9-11 and 14 in a multi-link trunk network.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10, 12-13, 15-18 and 21 are rejected under 35 U.S.C. 103(a) as being

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unpatentable over Simmons in view of Frazier et al. (USP 5,784,559) (hereinafter "Frazier").

Regarding claim 1, in according to Figures 2-4, col. 6, line 5 to col. 10, line 12, Simmons discloses a flow control method (corresponding to "method for preserving frame order of a plurality of frames" in a half duplex Ethernet network (Figure 2) (corresponding to "plurality of communication links"), the method comprising, among other things: assigning a pointer value to each of a plurality of records in a buffer receiving a corresponding plurality of frames based, at least in part, on a destination port (note: col. 8, lines 21-43, Simmons discloses rules checker 42 or 68 places the port vector and the corresponding frame pointer into the port vector FIFO 63. Then, the port vector FIFO 63 assigns the frame pointer to the appropriate destination port(s) by placing the frame pointer into the top of the appropriate output queue 67 (corresponding to claimed "based on a relative order in which the indications are received" because the frame pointer is placed into the top of the output queue 67). Thus, the recitation thereat reads on the claimed limitation set forth.)

Note that Simmons, in according to col. 6, lines 50-56, also discloses one of the advantages of using external rule checker 44 is increasing the capacity of the network. Moreover, Simmons, in according to Figure 2A, also shows signal RX_DVB, as known in the Gigabit Ethernet world is Received Data Valid signal, when enable causes MII 28 in the interface 12 to receive data on RXDB.

Simmons fails to explicitly disclose the step of receiving up to a plurality of indications denoting the start of frame transmission on a corresponding plurality of

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communication links. However, the step of receiving up to a plurality of indications denoting the start of frame transmission on a corresponding plurality of communication links is well known and discloses by Frazier.

In according to Figures 1, 3C-3D and 6, the abstract and col. 6, lines 6-9, col. 9, line 31 to col. 10, line 24, and col. 13, lines 39-42, Frazier discloses flow control method in a full duplex Ethernet network comprising, among other steps, the step of receiving up to a plurality of indications denoting the start of frame transmission on a corresponding plurality of communication links (note: col. 6, lines 6-9, Frazier discloses when RX_DV is asserted on the MII, MAC receive processing logic accepts and process data from the physical layer, and then passes the processed data to the logical link control layer and col. 13, lines 39-42, Frazier discloses the receive carrier sense variable may be derived directly form the MII signal RX_DV, and is used to indicate incoming bits. Thus, the recitation thereat is corresponding to the step of receiving.

Thus, it would have been obvious to a skilled artisan at the time of the invention to implement Frazier's teaching into Simmons' method to provide a flow control mechanism for a full-duplex Ethernet network as well as increasing the network capacity.

Regarding claims 2-3 and 7-8, in according to '028, col. 8, lines 34-43, Simmons discloses "the buffer manager 65 takes the assigned frame pointer from the bottom of the output queue 67 using a frame pointer read bus 86, fetches the corresponding data frame in a DMA transaction from the location in external memory 36 pointed to by the assigned frame pointer" corresponding to the claimed limitations set forth.

Thus, Simmons in view of Frazier discloses the claimed limitations set forth as claimed.

Regarding claims 4-5, see '559, Figures 3C-3D, wherein Frazier shows RX_DV (corresponding to claimed limitation of "indication") is an analog indication. Thus, Simmons in view of Frazier discloses the claimed limitations set forth as claimed.

Regarding claim 6, see '028, col. 7, lines 47-56, wherein Simmons discloses frames (each of which comprising header and type/length information) are received by the internal MAC engines 60, 62, or 36 and placed in the corresponding receive FIFO 64, corresponding to the claimed limitation set forth. Thus, Simmons in view of Frazier discloses the claimed limitations set forth as claimed.

Regarding claims 10 and 12-13, they are rejected by the same rationale applied to claims 1 and 4-5 as discussed above.

Regarding claims 15-18, the claims are rejected by the same rationale applied to claims 1-6 as discussed above because the claims call for an intended use of the method of claims 1-6 in a multi-link trunk network.

Regarding claim 21, the claim calls an intended use of the apparatus of claim 10 in a multi-link trunk network. Thus, it is rejected by the same rationale applied to claim 10.

Response to Arguments

6. Applicant's arguments filed 01/08/2002 have been fully considered but they are not persuasive. Applicants' arguments will be addressed hereinbelow in the order in which they appear in the response dated 01/08/2001.

In the Remarks of the outstanding response, on page 4, second paragraph, in reference to the provisional obvious-type double patenting rejection pertaining claims 1-22, Applicants traversed the Examiner's position. In supporting the traversal, Applicants alleged that *"it seems that the wording of the claims is being used to indicate that the asserts conflict is self-evident. The manner in which one claims' being "encompassed" by the other has not been demonstrated."*

In response, Examiner asserts that the provisional obvious-type double patenting rejection pertaining claims 1-22 is proper. As clearly pointed out in the Office Action, claims 1-22 of the instant application encompassed the claimed subject matters of the claims 1-18 of the co-pending application 09/271,011. The differences, as clearly pointed out in the Office Action, between the conflicting claims are self-evidence in the wording. Although the conflicted claims are not identical, they are not patentably distinct from each other because of wording.

Moreover, the subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

In the Remarks of the outstanding response, on page 4, last paragraph continues to page 5, first paragraph, in reference to the rejection under 35 U.S.C. 102(e) applied to claims 9, 11, 14, 19, 20 and 22, Applicants assert "*Note that in Applicants' specification at page 4 ... Simmons does not address the problem of maintaining frame order between source and destination nodes. He does not teach the same invention.*"

In response, Examiner respectfully disagrees. A careful review of the above claims, Examiner finds no such language of "*maintaining frame order between source and destination*" in the claims. Perhaps applicant refers to certain features that are disclosed in the present application but not recited in the rejected claims in making the contention that the Simmons reference fails to show certain feature of applicants' invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In the Remarks of the outstanding response, on page 6, first paragraph, in reference to the rejection under 35 U.S.C. 102(e) applied to claims 9, 11, 14, 19, 20 and 22, Applicants further assert "*Simmons does not teach maintaining frames in order as recited by Applicants*".

In response, Examiner respectfully disagrees. A careful review of the above claims, Examiner finds no such language of "*maintaining frames in order as recited by Applicants*" in the claims. Perhaps applicant refers to certain features that are disclosed

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in the present application but not recited in the rejected claims in making the contention that the Simmons reference fails to show certain feature of applicants' invention.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Also on page 6 of the Remarks, from first paragraph continues to last paragraph, Applicants further allege "*Simmons in fact does not teach assigning a pointer value to each of a plurality of records denoting a relative order of frame transmission*". To support the allegation, Applicants did a word search in the text of Simmons, at column 6, lines 50-56 and contended that "*If indeed Simmons is working to keep frames in order, as recited by the Applicants, there would be no decision to be made in an order independent from the order in which the frames were received by the multiport switch 12.*"

In response, Examiner respectfully disagrees for the following reasons:

First, from the passage discussed at column 6, lines 50-56, Examiner asserts Applicants cannot conclude Simmons "*does not teach assigning a pointer value to each of a plurality of records denoting a relative order of frame transmission.*" At the discussed passage, Simmons merely states use of the external rule checker 44 provides advantages, among other things, enables decision to be made in an order independent from the order in which the frames were received by the multiport switch 12.

Second, Examiner would like to direct Applicants' attention to the passage discussed at col. 8, lines 26-33, wherein Simmons states "*The port vector FIFO 63 assigns the frame pointer to the appropriate destination port(S) by placing the frame pointer into the top of the appropriate output queue 67, queuing the transmission of the data frame from the corresponding destination port. Hence, the frame pointer becomes an "assigned frame pointer," where it is assigned to a destination*". In doing so, Simmons does indeed teach "*assigning a pointer value to each of a plurality of records denoting a relative order of frame transmission.*"

In the Remarks of the outstanding response, on page 7, second paragraph, in reference to the rejection under 35 U.S.C. 103(a) pertaining claims 1-8, 10, 12-13, 15-18 and 21, Applicants assert that "*Simmons does not teach the flow control method for preserving order of a plurality of frames. It is important to note preserving frame order of a plurality of frames in language that comes only from Applicants' specification. It is not found in Simmons, specification*".

In response, Examiner respectfully disagrees. The flow control method taught by Simmons, either implicitly or inherently, does indeed preserving frame order of a plurality of frames as discussed in the Office Action and in the response to arguments pertaining claims 9, 11, 14, 19, 20 and 22 discussed above.

Also on page 7 of the Remarks, last paragraph, in reference to Frazier's teaching, Applicants disagree with the Examiner's interpretation of Frazier's RX_DV and state that "*Frazier discloses that when RX_DV is inserted on the MII, process data can be passed to a logical layer. This is not the same as denoting the start of a frame*

transmission on a corresponding plurality of links. Indeed, there is no teaching in the phrase of the disclosure of an output line that provides a useful signal indicative of frame transmission and that has a reason for being there."

Examiner respectfully disagrees and asserts that Frazier's RX_DV does indeed denoting the start of a frame transmission on a corresponding plurality of links, a sole function of RX_DV in MII of the Ethernet Standard or in GMII of the Gigabit Ethernet standard because receive data is driven by the PHY to the controller, and is strobed by Receive Data Valid (RX_DV), which is also sourced by the PHY. Moreover, Examiner recognizes Dr. Kalkunte, Dr. Mangin and Dr. Crayford are the well-known pioneers in the Gigabit Ethernet community and appreciates their contributions to the advancing of the Gigabit Ethernet.

In the Remarks of the outstanding response, on page 8 continues to page 9, first paragraph, in reference to the combination of Simmons and Frazier references in the rejection, Applicants allege that "There is no suggestion of any shortcoming in Simmons which could be cured by Frazier. There is no suggestion that Frazier itself states that it could be used in the context of Simmons. The only teaching in the record for combining the features taken out of context from Simmons and Frazier are found in Applicants' claims."

In response, Examiner disagrees for the following reasons:

First, the test for obviousness is not whether the features of the reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the references make obvious to one of ordinary skill in the art. In re Bozek, 163 USPQ

545, (CCPA 1969); *In re Richman* 165 USPQ 509 (CCPA 1970); *In re Beckum*, 169 USPQ 47 (CCPA 1971); *In re Sneed*, 710 F.2d 1544, 218 USPQ 385.

Second, it is not necessary that the references actually suggest, expressly or in so many words, the changes or improvements that applicant has made. The test or motivation for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. *In re Sheckler*, 168 USPQ 716 (CCPA 1971); *In re McLaughlin* 170 USPQ 209 (CCPA 1971); *In re Young* 159 USPQ 725 (CCPA 1968).

Thus, Examiner contends the combination of Simmons and Frazier references, in the rejection of the discussed claims, is proper.

Examiner believes an earnest attempt has been made in addressing all of the Applicants' argument. The rejection from the last Office Action is maintained.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

De-Leon, Flow Control For Gigabit Ethernet, IEEE 802.3Z Task Force, pages 1-31, July 9, 1996.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is (703) 308-5428. The examiner can normally be reached on 7:00AM-3:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (703) 305-4366. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

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Frank Duong
March 24, 2002



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